UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JONATHAN KAGLE

Appeal No. 2006-0459
Application No. 09/299,724

ON BRIEF

Before BARRETT, BARRY and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 68. For the reasons stated *infra* we affirm-in-part the examiner's rejection of these claims.

Invention

The invention relates to a method of laying out web pages using a graphical user interface. Web pages are divided into horizontal regions or rows. A particular region is laid out by selecting a style template. See page 4 of appellant's specification. The graphical user interface also displays the web page as it is being created. See figure 3 and description on page 14 of appellant's specification.

Claim 1 is representative of the invention and is reproduced below:

1. A method for generating a hypertext markup language (HTML) page, the method comprising steps of:

generating a web page layout;

receiving a predetermined selection signal indicative of a user interface selection device pointing at a selected predetermined region of the web page layout;

receiving a style template selection signal indicative of the user selection device pointing at a selected style template for the predetermined region, the selected style template including at least one HTML code defining a style of the style template; and

automatically generating an updated web page layout responsive to receiving the style template signal.

References

The references relied upon by the examiner are:

Jois et al. (Jois)	6,112,242	Aug. 29, 2000 (filed Jul. 10, 1996)
Moore et al. (Moore)	6, 330,575	Dec. 11, 2001 (filed Mar. 31, 1998)

Rejection at Issue

Claims 1 through 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jois in view of Moore.

Opinion

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer. With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellant and the examiner, and for the reasons stated *infra* we sustain the examiner's rejections of claims 1 through 44 and 62 through 68 under 35 U.S.C. § 103(a). However, we will not sustain the examiner's rejections of claims 45 through 61 under 35 U.S.C. § 103(a).

Claims 1 through 16, 23 through 38, 62, 63 and 65 through 68

Appellant argues, on pages 3 and 4 of the brief, that the combination of Jois and Moore do not teach the claimed feature of "automatically generating an updated web page layout responsive to receiving the style template selection signal." Appellant argues that Moore, the reference the examiner relies upon to teach this feature, includes a preview feature, which the user must select to

preview the web page. Thus appellant argues, "*Moore* does not automatically generate an updated web page responsive to receiving the style template selection signal, rather, in *Moore*, a user can only preview his/her web page responsive to when he/she selects the 'preview' tab option." See brief page 4.

In response, the examiner states, on pages 18-19 of the answer, that in the Moore reference:

> When a user clicks on the Left, Right, or Center button for selecting a style for the header (figure 7) [the examiner considers the user selection of style of the header to correspond to the claimed receiving a style template selection (see page 4 of the brief)], the style of the header is changed automatically by the system. The web page layout including the header, thus, is automatically generated when receiving the style template selection signal for the header. It is true that a user has to select Preview (figure 7) to look [at] the web page corresponding to the web page layout just updated. However, it is clear that *generating such an updated web page layout is performed automatically by the system, not by user,* when receiving a request by a user for changing the style of the header.

We concur with the examiner. Claim 1 includes the limitation "generating an updated web page layout responsive to receiving the style template." Thus, claim 1 recites updating the layout of the page, not the web page itself or the display of the web page. Appellant's specification identifies that the layout is made up using a series of templates, which are then used to generate the HTML page. See pages 10 and 11 of appellant's specification. Thus, we consider the scope of the term "web page layout" to include the selections of which templates are to be used to generate the web page. Appellant's arguments seek to equate Moore's preview with the step of generating an update web page layout, and then distinguish the claim as it recites automatically generating the web page

layout as compared to Moore's user selection of a preview. However, claim 1 is not limited to automatically updating a previewed display of the web page. Moore teaches the selection of the template generates the layout. Moore teaches that the user can select the location for the header by simply selecting one of the locations and clicking the circle associate with the template, there is no additional step to accept the user's selection. See Figure 7. It is clear from Moore that data concerning the template selected by the user is kept. As stated above we consider the data concerning templates selected by the user to be a web page layout. Thus, we find that Moore teaches in response to the user selection of a template automatically generated updated web page layout.

Appellant also argues, on page 4 of the brief, that the combination of the Jois and Moore do not teach the claimed step of "receiving a predetermined selection signal indicative of a user interface selection device pointing at a selected predetermined region of the web page layout." Appellant argues that Jois contains "no description of a signal indicative of a user interface device pointing at any region of the web page layout." Further, appellant asserts that Moore fails to cure this alleged deficiently.

In response the examiner states, on page 18 of the answer: "Moore shows changing the style of the header, which is a predetermined region of a web page layout (figure 7: the style of the header can be changed to Left, Right, or Center) where changing the style of the header by *clicking on* Left, Right or

Center of the header template shows a selecting device pointing at a selected predetermined region of the web page layout."

We concur with the examiner. Initially we note that Moore's figure 7 depicts a screen through which a user is prompted to input information to assist in designing a web page. See Moore Column 10, lines 44 through 40 and column 11, lines 4 through 15.

Claim 1 includes the limitation "receiving a predetermined selection signal indicative of the user interface selection device pointing at a selected predetermined region of the web page layout." We consider the scope of this limitation includes receiving a signal identifying a region of the web page layout. We concur with the examiner's finding that Moore teaches that the user selects, through a user interface, the region of the web page layout to be adjusted. In the examiner's example, relying upon figure 7, the header of the web page is the selected region of the web page layout. We consider the step of receiving the predetermined selection to be met by Moore's teaching of receiving the user's selection of either the box "use header" or tab "Head/Foot".

Claim 1, also includes the limitation "receiving a style template selection signal indicative of the user selection device pointing at a selected style template for the predetermined region." Thus, claim 1 also recites a limitation that the user selects a style template to be used in the region selected in the preceding step. We concur with the examiner's finding that Moore teaches a template where the user can select a style to be used in the header region. Specifically, Moore

teaches that the user can select placement of the header image as Left, Right, or Center and the size of the image. Thus, we consider the step of receiving a style template is met by Moore's teaching receiving the user's selection of the placement of the header image and it's size.

Appellant's arguments have not convinced us of error in the examiner's rejection of claims 1 and 23. Accordingly, we sustain the examiner's rejection of claims 1 and 23 under 35 U.S.C. § 103(a). Appellant has not presented arguments directed to the examiner's rejection of dependent claims 2 through 16, 24 through 38, 62, 63 and 65 through 68. Accordingly, we sustain the examiner's rejection of claims 2 through 16, 24 through 38, 62, 63 and 65 through 68 for the reasons stated with respect to claims 1 and 23.

Claims 17 through 22, 39 through 44 and 64

On page 5 of the brief appellant argues:

> [I]ndependent claims 17 and 39 each recite, among other features, "automatically generating an updated web page layout responsive to receiving the macro style template selection signal." Appellant's invention is patentably distinguishable over the combination of *Jois* and *Moore* for at least the same reasons as stated above with reference to Appellant's claims 1 and 23.

The rules in effect at the time the brief was filed specifically address the weight to be given to such statements and allegations presented by appellant. See 37 CFR § 41.37 (c) (1) (vii) (2005, which became effective September 13, 2004 (69 Fed. Reg. 49960 (Aug 12, 2004))):

> A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

Appellant has not discussed why the evidence would support a holding that claims 17 and 39 are patentable apart from claim 1. Therefore, we will sustain the Examiner's rejection of claims 17, 39 and the claims dependent thereupon (claims 18 through 22, 39 through 44 and 64) under 35 U.S.C. § 103 as standing of falling with the patentability of claim 1.

Claims 45 through 61.

Appellant argues on page 6 of the brief, that the combination of Jois and Moore do not teach the limitation of "displaying a web page layout on a display" and "automatically displaying an updated web page layout in response to the received style template selection signal." Appellant argues that, though Jois shows a composite interactive web page in figure 4, figure 4 is the end result of a web page after it has been created.

In response, on page 19 of the answer, the examiner states:

> [T]he Examiner agrees that Figure 4 of Jois shows the web page. However, this is the web page of a corresponding master template, which is a web page layout, in figure 5 (and also col 5, line 42 to col 6, line 14). As mentioned above, Jois discloses a master template including subtemplates (figure 5). Moore discloses updating the header, which is a predetermined region in a web page layout, by clicking on the Left, Right or Center button (figure 7). Moore further discloses displaying a web page layout and provides the option of "Modify Page Layout" (figure 10). Said *modifying feature on the displayed page layout,* thus, motivates displaying an updated web page layout when applying "Modify Page Layout" to change the page layout.

We disagree with the examiner. Claim 45 includes the limitations of "displaying a web page", "receiving a predetermined region selection ...", "receiving a style template selection ...", and "automatically displaying an

updated web page layout in response to the received style template selection." Thus, the scope of claim 45 encompasses a method where a web page layout is displayed and the displayed layout is updated in response to the selections. Though, as stated *supra*, we find that Moore teaches automatically updating the web page layout, we do not find that Moore teaches or suggests displaying the updated web page layout. We do not find that Figure 10 of Moore teaches this limitation. Figure 10 is an input screen that is presented following the screens shown in figure 8 and 9. While figure 10 does depict a display, it is depicting the display of the template selected from screen 9 not a display of the web page layout. We do not find that Jois teaches or suggests modifying Moore such that a web page layout is displayed and the displayed layout is updated in response to the selections. Accordingly, we will not sustain the examiner's rejection of independent claim 45 and dependent claims 46 through 61.

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief or by filing a reply brief have not been considered and are deemed waived by appellant (see 37 CFR § 41.37(c)(vii)). Support for this rule has been demonstrated by our reviewing court in ***In re Berger***, 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed. Cir. 2002) wherein the Federal Circuit stated that because the appellant did not contest the merits of the rejections in his brief to the Federal Circuit, the issue is waived. ***See also In re Watts***, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

Conclusion

In summary, we sustain the examiner's rejections of claims 1 through 44 and 62 through 68 under 35 U.S.C. § 103(a). However, we will not sustain the examiner's rejections of claims 45 through 61 under 35 U.S.C. § 103(a). The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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